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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,309	06/19/2007	Bernard Jeannin	3714652-00505	3498
29157 K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690	7590 10/06/2011			
EXAMINER				
PASCUA, JES F				
ART UNIT		PAPER NUMBER		
3782				
NOTIFICATION DATE		DELIVERY MODE		
10/06/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

**Office Action Summary****Application No.**

10/568,309

**Applicant(s)**

JEANNIN, BERNARD

**Examiner**

JES F. PASCUA

**Art Unit**

3782

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 March 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 1-11, 13, 14, 16-20 and 22 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1-11, 13, 14, 16-20 and 22 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-SB-005)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/02/2011 has been entered.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 810, 13 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, the recitation that the strips are located on an outer surface of the walls is inconsistent with the recitation that the strips are between the layer of aluminum foil and the layer of polypropylene in claim 1.

In claim 9, the recitation that the strips are located on an inner surface of the walls is inconsistent with the recitation that the strips are between the layer of aluminum foil and the layer of polypropylene in claim 1.

In claim 10, the recitation that one pair of strips is located on an internal wall surface and the other pair on an external wall surface is inconsistent with the recitation that the strips are between the layer of aluminum foil and the layer of polypropylene in claim 1.

Claims 13 and 16 are indefinite because they depend from cancelled claim 12.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-11, 13, 14, 16-20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Document No. 26 09 520 to Kimura, U.S. Patent No. 4,598,826 to Shinbach and French Document No. 2 832 698 to Jammet et al.

Kimura discloses the claimed invention except for the strips having a thickness from about 20 to 50 microns. Shinbach teaches that it is known in the art to provide analogous strips (strip material 18 comprised of three layers 20, 22, 24) having a thickness (i.e. the combined thicknesses of each layer 20, 22, 24) from about 38.1 microns to about 76.2 microns. See column 3, lines 3-23. It would have been an obvious matter of design choice to provide the strips of Kimura with a range of thickness from about 38.1 microns to about 76.2 microns, as in Shinbach, since such a

modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. There is nothing in applicant's specification that indicates 20 to 50 micron thick strips are critical and provide any unexpected result.

Furthermore, Kimura discloses the claimed invention, as discussed above, except for each of the front and back walls comprising a 3-layer laminate of polyethylene/aluminum foil/polypropylene with the pair of tear-limiting strips applied to each wall between the layer of aluminum foil and the layer of polypropylene. Jammet et al. teaches that it is known in the art form an analogous, tear-open container with front and back walls comprising a 3-layer laminate of polyethylene/aluminum foil/polypropylene with a pair of tear-limiting strips (50, 61) applied to each wall between the layer of aluminum foil and the layer of polypropylene. See Fig. 12. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to form the front and back walls of the modified Kimura container comprising a 3-layer laminate of polyethylene/aluminum foil/polypropylene with the pair of tear-limiting strips applied to each wall between the layer of aluminum foil and the layer of polypropylene, as suggested in Jammet et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Moreover, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to apply the tear-limiting strips of the modified Kimura container to each wall

between the layer of aluminum foil and the layer of polypropylene, as suggested in Jammet et al., in order to hide the strips from view.

Regarding claim 6, Kimura discloses the claimed invention, as discussed above, except for the width of the strips being about 1.2 mm to 2.5 mm. It would have been an obvious matter of design choice to make the strips of Kimura 1.2 mm to 2.5 mm wide, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. Furthermore, there is nothing in applicant's specification that indicates 1.2 mm to 2.5 mm wide strips are critical and provide any unexpected result.

Regarding claim 22, Kimura discloses the claimed invention, as discussed above, except for the strips being formed from polyester, polyethylene or polypropylene. Shinbach teaches that it is known in the art to provide analogous strips (18) using polyester, polyethylene or polypropylene. See column 3, lines 3-23 of, wherein Shinbach discloses that the intermediate layer (22) of the strip (18) may be polyester and the inner and outer layers (20, 24) of the strip (18) may be the same material as the layer (16) of the package to which the strip sealed. Column 2, lines 58-66 of Shinbach discloses the layer (16) as polyethylene or polypropylene. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use polyester, polyethylene or polypropylene for the strips of Kimura, as in Shinbach, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design

choice. Furthermore, there is nothing applicant's specification indicating strips formed of polyester, polyethylene or polypropylene are critical or provide any unexpected result.

Insofar as claims 8-10 can be understood, applying the tear-limiting strips of the modified Kimura container to each wall between the layer of aluminum foil and the layer of polypropylene, as suggested in Jammet et al., meets the claimed locations.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-11, 13, 14, 16-20 and 22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

7. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 714.02 and MPEP 2163.06. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JES F. PASCUA whose telephone number is (571)272-4546. The examiner can normally be reached on Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jes F. Pascua/  
Primary Examiner, Art Unit 3782